

**NONPRECEDENTIAL**

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

PETER MITCHELL, )  
)  
Plaintiff )  
)  
v. )  
)  
VIRGIN ISLANDS WATER AND )  
POWER AUTHORITY, )  
)  
Defendant )

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CIVIL NO. 2000-0167

**ORDER**

THIS MATTER is before the Court on Defendant Virgin Islands Water and Power Authority's Motion to Reconsider March 16, 2004 Memorandum Opinion and Order, docket item # 98. The Court held a hearing on this matter on June 8, 2004. At that time, counsel for both parties waived oral argument on this motion.

In reconsidering its March 16, 2004 Memorandum Opinion and Order on Defendant's Motion for Summary Judgment, the Court agrees with Defendant that the only claim Plaintiff has remaining in this case is his ADA claim. However, the Court also finds that it must vacate its August 11, 2003 Order (which denied Plaintiff's Motion for Consideration and to Show Cause) to ensure that the Court decides the summary judgment issue on the merits, as the interests of justice so require. Although the Court will amend the March 16, 2003 Memorandum Opinion to reflect the necessary changes brought to the Court's attention by Defendant, the March 16,

2003 Order will stand as filed. Accordingly, it is hereby

**ORDERED** that the August 11, 2003 Order denying Plaintiff's Motion for Consideration and to Show Cause in this matter is **VACATED**. It is further

**ORDERED** that Plaintiff's Motion for Consideration and to Show Cause is **GRANTED**. It is further

**ORDERED** that Defendant's Motion to Reconsider March 16, 2004 Memorandum Opinion and Order is **GRANTED in part** and **DENIED in part**. An appropriate Amended Memorandum Opinion for the March 16, 2004 Memorandum Opinion is attached.

**ENTER:**

**Dated:** June 8, 2004

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**RAYMOND L. FINCH**  
**CHIEF U.S. DISTRICT JUDGE**

**Attest:**  
Wilfredo F. Morales  
Clerk of the Court

**By:** \_\_\_\_\_  
**Deputy Clerk**

cc: Honorable Jeffrey L. Resnick, U.S. Magistrate Judge  
Sharmane Davis-Brathwaite, Esq.  
Natalie Nelson Tang How, Esq.

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Defendant )

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CIVIL NO. 2000-0167

**ATTORNEYS:**

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*Attorney for Plaintiff*

**AMENDED MEMORANDUM OPINION**

**Finch, Chief Judge**

Pursuant to Defendant Virgin Islands Water and Power Authority's Motion to Reconsider  
March 16, 2004 Memorandum Opinion and Order, the Court seeks to amend its Memorandum

Opinion entered on March 16, 2004 in the above-captioned matter, to read as follows:

“This matter comes before the Court on Defendant Virgin Islands Water and Power Authority (“the Authority”)'s Motion for Summary Judgment. For the reasons expressed herein, Defendant's motion will be denied.

## **I. Background**

Plaintiff Peter Mitchell brings this employment discrimination action alleging that although Defendant Virgin Islands Water and Power Authority recognized he had a disability, Defendant failed to assist or accommodate this disability. Plaintiff's Second Amended Complaint alleges that Plaintiff is entitled to relief under The American with Disabilities Act (“ADA”) and Title VII of the Civil Rights Act as amended. (Plaintiff's Second Amended Complaint ¶ 1.) In addition to compensatory damages, costs, and attorney fees, Plaintiff also seeks punitive damages. (Plaintiff's Second Amended Complaint ¶ 21.)

Defendant moves for summary judgment on the one and only count (Count I) of Plaintiff's Second Amended Complaint, pursuant to Fed. R. Civ. P. 56(b), for the reason that there are no genuine issues of material fact for trial and that Defendant is accordingly entitled to judgment as a matter of law.

## **II. Analysis**

### **A. Standard Governing a Rule 56 Motion for Summary Judgment**

Under Fed. R. Civ. P. 56, a court may grant summary judgment only if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show

that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). A dispute involving a material fact is “genuine” where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). In determining whether such genuine issues exist, the Court must resolve all reasonable doubts in favor of the nonmoving party. Christopher v. Davis Beach Co., 15 F.3d 38, 40 (3d Cir. 1994). The burden of proof for summary judgment lies with the moving party. Adickes v. S.C. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598 (1970). A trial court should not act other than with caution in granting summary judgment, and may deny summary judgment where there is reason to believe that the better course would be to proceed to a full trial. Anderson, 477 U.S. at 254.

**B. The American with Disabilities Act of 1990 (“ADA”), 42 U.S.C.S. § 12101 et seq.**

To make a prima facie case on an ADA claim requires Plaintiff to establish that he: (1) has a disability, (2) is a qualified individual, and (3) suffered discrimination on the basis of his disability. See, e.g., Matheson v. Virgin Islands Community Bank, Corp., 297 F.Supp.2d 819, 826 (D.V.I. 2003) (citing Pritchard v. Southern Co. Servs., 92 F.3d 1130, 1132 (11th Cir. 1996)). Defendant moves for summary judgment on Plaintiff’s ADA claim on the basis that Plaintiff is not substantially limited in the major life activity of working. The relevant inquiry, however, it is not whether Plaintiff was disabled, but whether the Authority “regarded” Plaintiff as disabled. Santiago v. City of Vineland, 107 F.Supp. 2d 512, 548 (D.N.J. 2000). In Santiago, the Court employed the Third Circuit’s holding that “even an innocent misperception based on nothing more than a simple mistake of fact as to the severity, or even the very existence, of an

individual's impairment can be sufficient to satisfy the statutory definition of a perceived disability." Id. at 548 (quoting Deane v. Pocono Medical Center, 142 F.3d 138, 144 (3d Cir.1998)(en banc) (citing 29 C.F.R. pt. 1630, app. § 1630.2(1))).<sup>1</sup>

Both Mr. Mitchell and the Authority agree that while working for the Authority as a crew leader, Plaintiff underwent a complete replacement of his right hip and that after recovering from this surgery, Plaintiff asked to be reinstated to his employment position. (Defendant's Motion at 3; Plaintiff's Second Amended Complaint at ¶ 9; Plaintiff's Deposition at 35.) Plaintiff has produced evidence that upon initially receiving a notice from Plaintiff's doctor after the surgery, the Authority considered Plaintiff to be totally disabled. (Deposition of Cassandra Dunn, 27.) This Court finds that if an employer regards an employee as totally disabled, then the employer regards the employee as having an impairment that substantially limits his work ability. Cf. Sutton v. United Air Lines, Inc., 527 U.S. 471, 473 - 474, 119 S.Ct. 2139, 2142 - 2143 (1999) (holding that a vision requirement for the position of airline pilot is not sufficient for an ADA claim because substantially limited work ability requires that one be prohibited from working in a class of positions or a broad range of positions in different classes). Plaintiff has also produced evidence that a subsequent notice from Plaintiff's doctor on March 5, 1999, advised that Plaintiff could return to work immediately with some restrictions. (Deposition of Cassandra Dunn, 28.) At that time, the Authority determined that Plaintiff was not confident that he would be able to fulfill all of the requirements of his job description and the Authority therefore refused to allow

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<sup>1</sup>In order to be a qualified individual, the Third Circuit has determined that Plaintiff must suffer from an "impairment." Id. at 548. In the instant case, Defendant does not dispute that Plaintiff incurred a physical impairment as a result of his hip surgery. (Defendant's Motion at 12.)

Plaintiff to return to work. (Deposition of Cassandra Dunn, 29 - 30.)

Plaintiff was subsequently terminated in December 1999 for the stated reason that Defendant was unsuccessful in finding a vacant position in which Defendant could work within the restrictions given by his physician. (Plaintiff's Exhibit 7, Letter from Glen A. Byron, Human Resources and Industrial Relations Director of the Authority). See David v. AMR Services Corp., 191 F.R.D. 89, 92 (DVI 2000) ("Under Sutton and Murphy, a 'regarded as' cause of action only accrues under the ADA if the employer terminates an employee because the employer regards the employee as unfit to work in any job as a result of the perceived disability.") Based on the evidence presented, the Court finds that a reasonable jury could conclude that the Authority perceived Plaintiff to be disabled and unfit to work in any job, and that the Authority discriminated against Plaintiff by failing to reasonably accommodate him. Defendant is not entitled to judgment as a matter of law based on Plaintiff's ADA claim because there is a genuine issue of material fact as to whether the Authority regarded Plaintiff as having an impairment that substantially limited his work ability.

### **III. Conclusion**

For the foregoing reasons, Defendant's Motion for Summary Judgment will be denied. An appropriate Order is attached."

**ENTER:**

**Dated:** June 8, 2004

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**RAYMOND L. FINCH**  
**CHIEF U.S. DISTRICT JUDGE**

**Attest:**  
Wilfredo F. Morales  
Clerk of the Court

**By:** \_\_\_\_\_  
**Deputy Clerk**

cc: Hon. George W. Cannon  
Sharmane Davis-Brathwaite, Esq.  
Natalie Nelson Tang How, Esq.